

**IN THE CIRCUIT COURT OF WAYNE COUNTY, WEST VIRGINIA**

**MARK A. SPAULDING, II,**

**Plaintiff,**

**v.**

**CIVIL ACTION NO.:** \_\_\_\_\_

**HONORABLE:** \_\_\_\_\_

**FEDEX GROUND PACKAGE SYSTEM, INC.,  
d/b/a FEDEX GROUND,  
GARY DAVIS, INC., and  
KENNETH BROWN,**

**Defendants.**

**COMPLAINT**

Now comes the Plaintiff, Mark A. Spaulding, II, by and through his counsel, Farmer, Cline & Campbell, PLLC, and states the following for his Complaint.

**PARTIES AND JURISDICTION**

1. Mark A. Spaulding, II ("Mr. Spaulding") is a West Virginia resident.
2. Defendant FedEx Ground Package System, Inc. ("FedEx") is, upon information and belief, a foreign corporation which, at times, does business in West Virginia as "FedEx Ground."
3. Gary Davis, Inc. is, upon information and belief, a foreign corporation.
4. Kenneth Brown ("Defendant Brown") is, upon information and belief, a resident of Kentucky.
5. Pursuant to *West Virginia Code* §§ 56-3-31 and 56-3-33, this Court has jurisdiction over the parties and claims asserted in this matter as Defendant Brown caused a tortious injury while operating a motor vehicle in West

## EXHIBIT A

Virginia and while acting as an employee of Defendant FedEx and Defendant Gary Davis, Inc. who were transacting business in West Virginia.

6. Pursuant to *West Virginia Code* § 56-1-1, Wayne County is an appropriate venue for this action as it is the location where the collision occurred and the cause of action arose and, upon information and belief, Defendants FedEx and Gary Davis, Inc. do not have any principal offices in West Virginia or any officers that reside in West Virginia.

### COUNT I

#### NEGLIGENT, RECKLESS, MALICIOUS, AND/OR OUTRAGEOUS CONDUCT

7. Mr. Spaulding incorporates, by reference, all preceding allegations contained within this Complaint.
8. On June 24, 2019 Mr. Spaulding was working for the West Virginia Department of Transportation, Division of Highways as a flagman and was standing alongside Route 52 in or near Fort Gay, Wayne County, West Virginia.
9. As Mr. Spaulding was directing southbound traffic to stop, a motorcycle operated by Edward Martin ("Mr. Martin") approached the area.
10. Mr. Martin began to slow his motorcycle in preparation for stopping.
11. Following behind Mr. Martin was a van (the "FedEx Van") owned by Gary Davis, Inc., and operated by Defendant Brown.

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12. As the FedEx Van approached the area where Mr. Spaulding was directing traffic to stop, Defendant Brown failed to stop, striking the rear of Mr. Martin's motorcycle.
13. After striking the motorcycle Defendant Brown proceeded forward, running partially off of the roadway.
14. Defendant Brown then struck Mr. Spaulding with the FedEx Van.
15. Defendant Brown continued southbound, until finally bringing the FedEx Van to a stop in or near the Rebel Mart parking lot.
16. The crash occurred as a proximate result of Defendant Brown's negligent, careless, and/or reckless conduct, and/or conscious, reckless and outrageous indifference to the health, safety and welfare of others.
17. As a direct and proximate result of Defendant Brown's wrongful acts and/or omissions and the collision described above, Mr. Spaulding suffered severe injuries to his body for which he has and/or will continue to experience and/or incur:
  - a. medical expenses;
  - b. lost wages and profits and loss of earning capacity;
  - c. pain and suffering;
  - d. physical limitations;
  - e. diminished capacity to enjoy life;
  - f. annoyance and inconvenience; and
  - g. other consequences and damages associated with his injuries as may be specified as this action progresses.

## EXHIBIT A

### COUNT II

#### PRIMA FACIE NEGLIGENCE

18. Mr. Spaulding incorporates, by reference, all preceding allegations contained within this Complaint.
19. In addition to those instances of negligence set forth elsewhere in this Complaint, Defendant Brown was negligent, reckless, careless, and/or acted with an outrageous indifference to the health, safety and welfare of others in one or more of the following ways:
  - a. driving too fast for conditions;
  - b. failing to keep a proper lookout;
  - c. failing to maintain control of the FedEx Van;
  - d. failing to operate the FedEx Van in a safe and prudent manner;
  - e. otherwise failing to use that degree of care and caution that a reasonable and prudent person would have exercised under the same or similar circumstances.
20. Defendant Brown, as an operator of a vehicle on a public roadway in West Virginia, owed a duty to the general public, and in particular to Mr. Spaulding, to obey all State and Federal laws and regulations with regard to operating the FedEx Van on a public roadway in West Virginia.
21. In addition to other duties of Defendant Brown as set forth in this Complaint, pursuant to *West Virginia Code* § 17C-6-1, Defendant Brown was required to maintain control of the FedEx Van and to operate the FedEx Van at a

## EXHIBIT A

reasonable and prudent speed under the circumstances so as to avoid colliding with other vehicles or pedestrians.

22. Defendant Brown violated the requirements of *West Virginia Code* § 17C-6-1 by failing to maintain control of the FedEx Van and causing it to crash into Mr. Spaulding.
23. In addition to other duties of Defendant Brown as set forth in this Complaint, pursuant to *West Virginia Code* § 17C-7-9, Defendant Brown was required to drive within the bounds of his lane and not proceed off of the roadway until that movement could be made with safety.
24. Defendant Brown violated the requirements of *West Virginia Code* § 17C-7-9 by proceeding off of the roadway and striking Mr. Spaulding.
25. In addition to other duties of Defendant Brown as set forth in this Complaint, pursuant to *West Virginia Code* § 17C-10-8, Defendant Brown was required to yield the right of way to maintenance or construction workers.
26. Defendant Brown violated the requirements of *West Virginia Code* § 17C-10-8, by striking Mr. Spaulding who was engaged in maintenance and/or construction work.
27. Defendant Brown's wrongful conduct and violations of the law and regulations proximately caused the collision and Mr. Spaulding's injuries and damages, as set forth above.
28. Defendant Brown's conduct constitutes prima facie evidence of negligence and is actionable.



**EXHIBIT A**

29. As a direct and proximate result of Defendant Brown's wrongful conduct, Mr. Spaulding suffered injuries and incurred the damages set forth in this Complaint.

**COUNT III**

**LIABILITY OF CORPORATE DEFENDANTS**

30. Mr. Spaulding incorporates, by reference, all preceding allegations contained within this Complaint.
31. Upon information and belief, Defendant Brown was operating the FedEx Van as an employee and/or agent of FedEx and Gary Davis Inc. at the time of the collision.
32. As such, FedEx and Gary Davis Inc. are vicariously liable for Defendant Brown's wrongful acts and omissions.

**WHEREFORE**, the Plaintiff, Mark A. Spaulding, II, requests that he be awarded judgment against the Defendants, FedEx Ground Package System, Inc., Gary Davis, Inc., and Kenneth Brown for the following:

- (a) compensatory damages in an amount to be determined by a jury;
- (b) punitive damages, to the extent that the Defendants' conduct warrants such damages;
- (c) pre and post judgment interest, as allowed by law;
- (d) attorneys' fees, costs and expenses incurred in connection with this action; and
- (e) such other and further relief as the Court deems just and appropriate under the circumstances.

EXHIBIT A

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE

MARK A. SPAULDING, II,

Plaintiff,

By Counsel:



✓ ROBERT A. CAMPBELL (W.Va. State Bar No. 6052)

R. CHAD DUFFIELD (W.Va. State Bar No. 9583)

FARMER, CLINE & CAMPBELL, PLLC

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Post Office Box 3842

Charleston, West Virginia 25338

(304) 346-5990

## COVER SHEET

## GENERAL INFORMATION

IN THE CIRCUIT COURT OF WAYNE COUNTY WEST VIRGINIA

**Mark A. Spaulding v. FedEx Ground Package System, Inc. d/b/a FedEx Ground****First Plaintiff:**☐ Business ☒ Individual  
☐ Government ☐ Other**First Defendant:**☒ Business ☐ Individual  
☐ Government ☐ Other**Judge:**

James Young

## COMPLAINT INFORMATION

**Case Type:** Civil**Complaint Type:** Other**Origin:** ☒ Initial Filing ☐ Appeal from Municipal Court ☐ Appeal from Magistrate Court**Jury Trial Requested:** ☒ Yes ☐ No **Case will be ready for trial by:** 6/19/2022**Mediation Requested:** ☐ Yes ☒ No**Substantial Hardship Requested:** ☐ Yes ☒ No☐ Do you or any of your clients or witnesses in this case require special accommodations due to a disability?

- ☐ Wheelchair accessible hearing room and other facilities
- ☐ Interpreter or other auxiliary aid for the hearing impaired
- ☐ Reader or other auxiliary aid for the visually impaired
- ☐ Spokesperson or other auxiliary aid for the speech impaired
- ☐ Other: \_\_\_\_\_

☐ I am proceeding without an attorney☒ I have an attorney: R. Duffield, PO Box 3842, Charleston, WV 25338



## EXHIBIT A

### SERVED PARTIES

**Name:** FedEx Ground Package System, Inc. d/b/a FedEx Ground  
**Address:** CT Corporation System 1627 Quarrier Street, Charleston WV 25311  
**Days to Answer:** 30 **Type of Service:** Plaintiff - Secretary of State

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**Name:** Gary Davis, Inc.  
**Address:** c/o Gary Davis 409 Meade Hollow, Wurtland KY 41144  
**Days to Answer:** 30 **Type of Service:** Plaintiff - Secretary of State

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**Name:** Kenneth Brown  
**Address:** 2334 E. Jepson Street, Ashland KY 41101  
**Days to Answer:** 30 **Type of Service:** Plaintiff - Secretary of State

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CIVIL CASE INFORMATION STATEMENT  
CIVIL CASES

IN THE CIRCUIT COURT OF WAYNE COUNTY, WEST VIRGINIA

## I. CASE STYLE:

Plaintiff(s)

**MARK A. SPAULDING, II,**

v.

CIVIL ACTION NO. 21-C-36  
HONORABLE: JAMES YOUNG

Defendant(s)	Days to Answer	Type of Service
<b>FEDEX GROUND PACKAGE SYSTEM, INC. d/b/a FEDEX GROUND CT Corporation System 1627 Quarrier Street Charleston, WV 25311-2124</b>	<b>30</b>	<b>WV Sec. of State</b>
<b>GARY DAVIS, INC. c/o Gary Davis 409 Meade Hollow Wurtland, KY 41144</b>	<b>30</b>	<b>WV Sec. of State</b>
<b>KENNETH BROWN 2334 E. Jepson Street Ashland, KY 41101-5047</b>	<b>30</b>	<b>WV Sec. of State</b>

Original and Complaint furnished herewith.

**EXHIBIT A**

PLAINTIFF: MARK A. SPAULDING, II	CASE NUMBER:
DEFENDANTS: FEDEX GROUND PACKAGE SYSTEM, INC., et al.	

## II. TYPE OF CASE:

TORTS	OTHER CIVIL	
<input type="checkbox"/> Asbestos	<input type="checkbox"/> Adoption	<input type="checkbox"/> Appeal from Magistrate Court
<input type="checkbox"/> Professional Malpractice	<input type="checkbox"/> Contract	<input type="checkbox"/> Petition for Modification of Magistrate Sentence
<input checked="" type="checkbox"/> Personal Injury	<input type="checkbox"/> Real Property	<input type="checkbox"/> Miscellaneous Civil
<input type="checkbox"/> Product Liability	<input type="checkbox"/> Mental Health	<input type="checkbox"/> Other
<input type="checkbox"/> Other Tort	<input type="checkbox"/> Appeal of Administrative Agency	<input type="checkbox"/> Fraud or Conversion

III. JURY DEMAND: ☒ Yes ☐ No  
CASE WILL BE READY FOR TRIAL BY (MONTH/YEAR): 06/22

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY OR AGE? ☐ YES ☐ NO  
IF YES, PLEASE SPECIFY:

- ☐ Wheelchair accessible hearing room and other facilities  
☐ Interpreter or other auxiliary aid for the hearing impaired  
☐ Reader or other auxiliary aid for the visually impaired  
☐ Spokesperson or other auxiliary aid for the speech impaired  
☒ Other: Unknown at this time

ROBERT A CAMPBELL (W. Va. State Bar. No. 6052)

R. CHAD DUFFIELD (W. Va. State Bar No. 9583)

Firm: FARMER, CLINE & CAMPBELL, PLLC  
Address: Post Office Box 3842  
Charleston, WV 25338  
Telephone: (304) 346-5990  
Dated: May 18, 2021  
Signature: /s/R. Chad Duffield

Representing:

- ☒ Plaintiff ☐ Defendant  
☐ Cross-Complainant  
☐ Cross-Defendant  
☐ Pro Se